

Bureau of Indian Affairs, Interior

§ 39.2

Subpart I—Interim Maintenance and Minor Repair Fund

- 39.110 Establishment and funding of an Interim Maintenance and Minor Repair Fund.
- 39.111 Conditions for distribution.
- 39.112 Allocation.
- 39.113 Use of funds.
- 39.114 Limitations.

Subpart J—Administrative Cost Formula

- 39.120 Purpose and scope.
- 39.121 Definitions.
- 39.122 Allotment of education administrative funds.
- 39.123 Allotment exception for FY 1991.

Subpart K—Pre-kindergarten Programs

- 39.130 Interim fiscal year 1980 and fiscal year 1981 funding for pre-kindergarten programs previously funded by the Bureau.
- 39.131 Addition of pre-kindergarten as a weight factor to the Indian School Equalization Formula in fiscal year 1982.

Subpart L—Contract School Operation and Maintenance Fund

- 39.140 Definitions.
- 39.141 Establishment of an interim fiscal year 1980 operation and maintenance fund for contract schools.
- 39.142 Distribution of funds.
- 39.143 Future consideration of contract school operation and maintenance funding.

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Subpart A—General

§ 39.1 Purpose and scope.

The purpose of this rule is to provide for the uniform direct funding of BIA operated and tribally operated day schools, boarding schools, and dormitories. These rules apply to all schools and dormitories and administrative units which are funded through the Indian School Equalization Program of the Bureau of Indian Affairs.

§ 39.2 Definitions.

Assistance under this rule is subject to the following definitions and requirements relating to fiscal and administrative matters. Definitions of

terms that are used throughout the part are included in this subpart. As used in this part, the term:

(a) *Agency* means an organizational unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes. The term includes Bureau Area Offices only with respect to off-reservation boarding schools administered directly by such Offices.

(b) *Agency school board* means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Director in consultation with the affected tribes, except that, in Agencies serving a single school, the school board of such school shall fulfill these duties.

(c) *Agency Superintendent of Education* or *Superintendent* means the Bureau official in charge of Bureau education programs and functions in an Agency who reports to the Director.

(d) *Area Director for Education* means the Bureau official in charge of Bureau Education programs and functions in a Bureau Area Office and who reports to the Director.

(e) *Assistant Secretary* means the Assistant Secretary of Indian Affairs, Department of the Interior, or his or her designee.

(f) *Average daily membership* or *ADM* means the average of the actual membership in the school, for each student classification given separate weightings in the formula. Only those eligible students shall be counted as members who are:

(1) Listed on the current roll of the school counting them during the count week;

(2) Not listed as enrolled in any other school during the same period; and

(3) In actual attendance at the school counting them at least one full day during the count week in which they are counted.

(g) *Bureau* means the Bureau of Indian Affairs of the Department of the Interior.

(h) *Decision of record* means a formal written confirmation of a voted action by a school board during a formally constituted school board meeting.

§ 39.2

25 CFR Ch. I (4-1-00 edition)

(i) *Director* means the Director of the Office of Indian Education Programs for the Bureau of Indian Affairs, or his or her designee.

(j) *Eligible student* means an Indian student properly enrolled in a Bureau school or dormitory, or a tribally operated school or dormitory funded by the Bureau, who meets the applicable entry criteria for the program(s) in which he or she is enrolled.

(k) *Entitlement* means that amount of funds generated by the Indian School Equalization Formula for the operational support of each school.

(l) *Advice of allotment* means the formula written document advising a school or an administrative office of its entitlement under the formula. The advice of allotment conveys legal authority to obligate and expend funds in a given fiscal year.

(m) *Allotment* means the amount of the obligational authority conveyed to a given school or Bureau administrative office by its advice of allotment in a given fiscal year.

(n) *Indian* means a person who is a member of an Indian tribe.

(o) *Indian Tribe* means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(p) *Program* means each or any subset of the Indian School Equalization Program (ISEP), but not the ISEP itself, for which a separately computable dollar amount may be generated by a school. Each program classification is a cost account in an accounting system. The following accounting programs are those established by this part:

- (1) Instructional costs;
- (2) Boarding costs;
- (3) Dormitory costs;
- (4) Bilingual instruction costs;
- (5) Exceptional child education costs;
- (6) Intense residential guidance costs;
- (7) Student transportation fund costs;

(8) School maintenance and repair fund costs;

(9) School board training fund costs;

(10) Pre-kindergarten costs; and

(11) Previously private contract school operation and maintenance costs.

(q) *School* means an educational or residential center operated by or under contract with the Bureau of Indian Affairs offering services to Indian students under the authority of a local school board and the direction of a local school supervisor. A school may be located on more than one physical site. The term *school*, unless otherwise specified, is meant to encompass day schools, boarding schools, previously private schools, cooperative schools, contract schools and dormitories as those terms are commonly used.

(r) *Local School Board*, (usually referred to as *school board*) including off-reservation boarding school boards and dormitory school boards, when used with respect to a Bureau school, means a body chosen to exercise the functions of a school board with respect to a particular Bureau operated or funded school, in accordance with the laws of the tribe to be served or, in the absence of such laws, elected for similar purpose by the parents of the Indian children attending the school, except that in schools serving a substantial number of students from different tribes, the members shall be appointed by the governing bodies of the tribes affected; and the number of such members shall be determined by the Director in consultation with the affected tribes.

(s) *Supervisor* or *local school supervisor* means the individual in the position of ultimate authority at any Bureau administered or tribally operated contract school.

(t) *Tribally operated contract school* or *contract school* means a school (other than a public school) which is financially assisted under a contract with the Bureau.

(u) *Weighted student unit (WSU)* means the measure of student membership adjusted by the weights or ratios used as factors in the Indian School Equalization Formula established in § 39.10 below. The term weighted student unit also describes the measure by which supplements to the weighted

Bureau of Indian Affairs, Interior

§ 39.11

student count at any school are augmented as the result of the application of small school supplements or Alaskan school supplements.

§ 39.3 General provisions.

(a) All funds appropriated by the Congress for the support and administration of Bureau operated or contracted elementary and secondary educational purposes and programs shall be allocated in accordance with, and be distributed through, the Indian School Equalization Program, unless a specific amount of funds are added or reduced for a particular class of schools through the budget and appropriations process.

(b) Each expenditure of funds authorized in part 39 is without exception subject to the availability of funds.

Subpart B—The Indian School Equalization Formula

§ 39.10 Establishment of the formula.

There is hereby established the Indian School Equalization Formula (ISEF). Funds for the instruction and residential care of Indian children shall be earned as an entitlement by each local school according to a weighted student unit formula. The funds allocated through the formula shall be computed as follows:

(a) The basic instructional average daily membership (ADM) shall be counted at each school location as provided for in subpart C of this part. From the application of ratios or weights as provided in these rules a weighted student unit (WSU) value for each school location is derived by multiplying the student count for each program area by the weights.

(b) If the school is a boarding school or a dormitory, the residential students will produce program units which will, by the application of weights, produce additional WSU's.

(c) The ADM count of eligible small schools or dormitories may generate additional unit supplements.

(d) All Alaskan schools are eligible under the formula to generate supplemental units.

(e) The total weighted student unit count for each school location is then multiplied by a base unit value to de-

rive the estimated dollar entitlement to each school(s).

The total amount is made available to each school(s), under the rules related to administrative provisions provided in subparts C and D of this part.

§ 39.11 Definitions.

Assistance to approved school(s) under this subpart is subject to the definitions established in § 39.2 and to the following definitions for determining student counts in the various weighted areas. As used in the subpart, the term:

(a) *Base* or *base unit* means both the weight or ratio of 1.0 and the dollar value annually established for that weight or ratio which represents students in grades 4 through 8 in a typical instructional program.

(b) *Basic program* means the instructional program provided all students at any age level exclusive of any supplemental programs which are not provided to all students in day or boarding schools.

(c) *Grade* or *Grade Level*, followed in most cases by *K* or a number, means a classroom grouping ordinarily determined by student age and successful completion of a criterion number of years of previous schoolwork. The use of this term does not preclude ISEP funding of programs in which instruction is *non-graded* or *individualized*, or which otherwise depart from grade-level school structure. For purposes of funding under the ISEP, students in such programs shall be counted as *in the grade level* to which they would ordinarily be assigned based on their chronological age and number of years of schooling completed.

(d) *Grades 1-3* means a weighted program for a student who is present during the count week (see § 39.30(b)) in grades 1 through 3 who is at least 6 years old by December 31 of the fall of the school year during which the count occurs and is a member of an educational program approved by the board which is conducted at least six gross hours daily during at least 180 days per school year. Gross hours means from the start of the school day to the end of the school day including all activities.